IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 70 of 1998

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MAHALAXMI SHIP BREAKING CORPN.

Versus

COMMISSIONER OF INCOME TAX

Appearance:

1. INCOME TAX REFERENCE No. 70 of 1998
MR RK PATEL for Petitioner No. 1
MR MANISH R BHATT for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA

Date of decision: 15/01/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE M.S.SHAH)

In this reference at the instance of the assessee, the following question is referred for our opinion, in respect of the assessment years 1988-89 and 1989-90:

"Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was justified in law in holding that the assessee is not entitled to the deduction under sections 80HH and 80I of the Income-tax Act, 1961 on the ground that the assessee's business of ship breaking was not an 'industrial undertaking' involving the manufacture or production of articles or things within the meaning of the said sections?"

2. We have heard Mr. Mr. R.K. Patel, learned counsel for the petitioner - assessee and Mr. M.R. Bhatt, learned Standing Counsel for the revenue.

3. Our attention is drawn to the decision of another Division Bench of this Court in Commissioner of Income-Tax v. Vijay Ship Breaking Corporation, 2003 (261) ITR 113, taking the view that ship breaking activity was not an activity of manufacture or production of any article or thing for the purposes of availing of the benefit of deductions under sections 80HH and 80-I of the Income-Tax Act, 1961. Since the issue raised in the present reference is already decided by this Court against the assessee, we answer the question in the affirmative i.e., in favour of the Revenue and against the assessee.

4. At this stage, Mr. R.K. Patel, learned counsel for the petitioner - assessee, states that the aforesaid decision of this court has been challenged before the Hon'ble Supreme Court and the Hon'ble Supreme Court has granted leave to appeal and, therefore, he prays for certificate under Section 261 of the Income-Tax Act, 1961.

5. In view of the aforesaid statement that the SLP against the aforesaid decision is granted which statement is not disputed by the learned counsel for the Revenue, we certify this to be a fit case for appeal to the Hon'ble Supreme Court.

6. The reference accordingly stands disposed of.

(M.S. Shah, J.)

(A.M. Kapadia, J.)

(karan)